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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
ALLEGHENY ENERGY SUPPLY COMPANY, LLC
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY FOR CONSTRUCTION OF A
1,080 MW (NOMINAL) GENERATING FACILITY
IN SECTION 35, TOWNSHIP 3 NORTH, RANGE
11 WEST IN LA PAZ COUNTY, ARIZONA AND
AN ASSOCIATED TRANSMISSION LINE AND
SWITCHYARDS BETWEEN AND IN SECTION 35,
TOWNSHIP 3 NORTH, RANGE 11 WEST AND
SECTIONS 23-26, TOWNSHIP 3 NORTH, RANGE
11 WEST ALSO IN LA PAZ COUNTY, ARIZONA.

DOCKET NO. L-00000AA-01-0116
CASE NO. 116

**ALLEGHENY'S
SUPPLEMENTAL BRIEF**

Arizona Corporation Commission
DOCKETED

MAR 18 2002

DOCKETED BY

Allegheny submits this supplemental brief in response to certain issues raised by

Commission Staff in its brief that go beyond Staff's original request for review filed on February

14, 2002. In its request for review, Staff's position was as follows: "Therefore, Staff

respectfully requests that the Commission review this matter pursuant to A.R.S. § 40-360.07 and

find that, in balancing the implicated public interests, the CEC should be modified to include all

of Staff's proposed conditions in Exhibit A." See Staff's Request for Review, p. 1, lines 25-27.

In its brief, however, Staff has opposed the Project based on alleged transmission concerns.

With Commission counsel's consent, Allegheny files this brief to address that additional issue.

**I. STAFF'S TRANSMISSION ARGUMENTS AGAINST THE PROJECT ARE
LEGALLY AND FACTUALLY FLAWED.**

In opposing La Paz, Staff focuses strictly on alleged problems with Arizona's
transmission system. In fact, Staff concedes that "Mr. Don Mundy may be absolutely correct

1 when he justifies the need for the La Paz Project from a generation perspective..." See Staff
2 Brief, p. 5, lines 19-20. Even so, Staff opposes the Project based on transmission constraints and
3 policy arguments regarding how transmission should be addressed in today's marketplace.
4 Staff's arguments against the Project aren't supported by the record and violate governing law
5 relating to transmission issues.

6 A. **STAFF'S TRANSMISSION ARGUMENTS GO BEYOND THE COMMISSION'S**
7 **AND STAFF'S SITING POWERS AND AUTHORITY.**

8 To place Staff's arguments in context, it's important to summarize precisely what
9 Allegheny has agreed and is required to do under the CEC approved by the Siting Committee.
10 Condition 11 requires Allegheny to provide the Commission with SCE Technical Studies which
11 will "identify transmission system upgrades or capacity improvements such that the Project will
12 not compromise the reliable operation of the interconnected transmission system..." Those
13 studies will not only be reviewed by SCE and Cal-ISO, but also by local interests including the
14 WATS Committee, the Palo Verde Engineering & Operations Group and Arizona Public
15 Service. See Hearing Exhibit A-28 (Appendix G to Allegheny's Brief). Transmission facilities
16 improvements must be completed prior to commercial operation of La Paz. Allegheny estimates
17 that those improvements, including expenditures to remedy transmission problems caused by
18 other merchant generators, may cost up to \$25 million--an unprecedented commitment for an
19 applicant before this Commission. See 1/16/02 Tr., pp. 1556-1557, 1603-1605.

20 In Condition 12, Allegheny also has committed to financially participate in
21 "additional necessary upgrades to the Palo Verde Hub to accommodate interconnected
22 generation." This condition requires consultation with Commission Staff, transmission owners
23 and interconnected plant operators and also is unprecedented before this Commission.

24 At hearing, Mr. Smith acknowledged that Staff's position involves policy

1 considerations beyond existing Arizona or federal rules, regulations and laws:

2 ...Staff has been in the dubious position of having to articulate issues outside the context
3 of what current rules, statutes and practices exist today and look to the future at where do
4 we have a competitive wholesale environment and it's from that context that Staff is
5 trying to articulate something for the future that is not grounded in the past...

6 See 1/15/02 Hearing Tr., pp. 1272-1273. There is no Arizona statute, rule or regulation
7 supporting Staff's argument for a moratorium on new generator interconnections at the Palo
8 Verde hub.¹ Further, Staff's policy goal of assuring sufficient transmission capacity falls within
9 FERC's exclusive jurisdiction.

10 On these transmission issues, FERC has stated clearly that new merchant power
11 plants can request interconnection under Order No. 888 without any request for transmission
12 service. See In Re Tennessee Power Co., 90 FERC ¶ 61,238 (2000). Contrary to Staff's
13 position, FERC has ruled that merchant generators need not build or provide their own
14 transmission capacity. On March 4, 2002, the United States Supreme Court confirmed FERC's
15 plenary jurisdiction over these transmission issues. See New York v. Federal Energy Regulatory
16 Comm'n, 535 U.S. ___, Dkt. No. 00-658 (March 4, 2002). As a matter of law, therefore, Staff's
17 arguments to reject this CEC to protect existing generators or certificate holders violate both
18 state and federal law.

19 Staff wants this Commission to ignore the reliability, interconnection and
20 transmission standards adopted by FERC, NERC, WSCC, WATS and the various transmission
21 providers in favor of Staff's own various policy concerns. In Staff's words, "the standard for
22 reliability for the utilities differs from what Staff is monitoring." See Staff Brief, p. 12, lines 15-
23 16. Fundamentally, however, Staff's policy concerns relating to the transmission system and

24 ¹ In fact, Staff's demand that Allegheny demonstrate no adverse impact on existing
or planned generation violates Ariz. Rev. Stat. § 40-360.02(C)(7).

1 development of the Palo Verde hub shouldn't be addressed in this siting docket. Jurisdictional
2 issues aside, Staff may seek to open a generic investigation docket if it wants to explore those
3 issues and the Commission then may take action on such policies as authorized by the
4 Administrative Procedure Act. This siting docket isn't the proper venue to debate policy issues
5 relating to FERC interconnection procedures, the size of the Palo Verde hub, how to develop a
6 competitive market or how to resolve transmission constraints in Arizona. The Commission
7 does not have jurisdiction, authority or, as importantly, the record to address those issues in this
8 siting case. See Ariz. Rev. Stat. § 40-360.06, § 40-360.07.

9 **B. STAFF'S RELIABILITY AND SECURITY ARGUMENTS ARE FLAWED.**

10 Staff urges a definition of reliability and security that guarantees that new
11 generation will not displace any "a priori generation." What Staff means is that new generators
12 (i.e., Allegheny) must have their own guaranteed transmission rights and capacity sufficient to
13 carry the full load of the new plant without displacing any other existing generator or another
14 CEC holder ahead of Allegheny in the queue. Staff advocates a position that new generators
15 should not be certificated in Arizona unless they will not use any transmission rights already
16 used by existing generators or which might be used by previous certificate holders. Staff
17 attempts to characterize that argument as an issue of grid reliability and security. It is neither.

18 Staff confuses the correctable issue of physical transmission impacts from La Paz
19 with displacement resulting from a competitive generation market. In this case, the record is
20 clear that La Paz's interconnection will not cause any physical restrictions on the transmission
21 system for any other generators. Staff's claims to the contrary are completely unsupported by
22 the record. La Paz is undergoing a Facilities Study to determine necessary mitigation measures
23 resulting from the Project's interconnection. The Facilities Study addresses what measures are
24

1 required to resolve the impacts identified in the System Impact Study. Allegheny will not be
2 allowed to interconnect to the grid until it has corrected all of those impacts. See 12/14/01 Tr.,
3 pp. 1014-1030; 1/16/02 Tr., pp. 1603-1605. SCE has indicated that Allegheny will be able to
4 alleviate any impacts from its interconnection to ensure reliability of the grid. Id. at 1605. Staff
5 presented no evidence or testimony to the contrary.

6 That means La Paz will not physically prevent any other generator from gaining
7 access to the transmission system. In its brief, Staff concedes those points, but argues that SCE
8 will not evaluate impacts to Arizona's transmission system as part of the Facilities Study. Staff
9 relies heavily on the argument that the SCE System Impact Study did not address the 8,000 MW
10 of generation which may or may not at some point in the future interconnect at the Palo Verde
11 hub. But, again, the record is undisputed that Allegheny's interconnection and the various
12 studies will be discussed, evaluated and reviewed by all stakeholders in the grid, including
13 WSCC, WATS, the Palo Verde Engineering & Operations Group and a variety of others. See
14 Exhibit A-28. Those groups include Arizona transmission providers (such as APS and SRP).

15 All of those stakeholders are charged with protecting the grid and ensuring that a
16 new interconnection won't jeopardize system reliability. The Arizona transmission providers
17 will have their say regarding the La Paz interconnection. At the January 16, 2001 siting hearing,
18 Mr. Mundy highlighted that fundamental point in his testimony:

19 Q: And in fact does federal law require that prior to the interconnection, all of those
20 issues be satisfactorily addressed, either by Allegheny or on Allegheny's behalf, before
the interconnection can occur?

21 A: Absolutely.

22 Q: I think you've already touched on this, but as part of the Allegheny
23 interconnection process, does the next phase of this process involve Arizona operators,
Arizona transmission providers, and specifically the Palo Verde E&O committee?

24 A: Yes, it does.

1 Q: And again, that process must be completed prior to interconnection?

2 A: That is correct.

3 See 1/16/02 Tr., p. 1605. Staff presented no evidence to the contrary on this point, either.

4 Put simply, the La Paz interconnection studies will be presented to the Arizona
5 transmission providers through peer review by WATS, WSCC and the Palo Verde E&O Group.
6 Those reviews will address impacts on the Arizona grid and Allegheny will be required to
7 alleviate any such impacts on the Arizona system. Id. at pp. 1600-1610. In response to that
8 testimony, Staff merely argues that SCE may ignore the comments of WATS, WSCC, the Palo
9 Verde E&O Group or the Arizona transmission providers. But Staff has absolutely no factual or
10 legal basis for that argument. All of the transmission providers have independent duties and
11 obligations to maintain the integrity of the interconnected grid. Mr. Mundy made it clear in his
12 testimony that Allegheny will be required to resolve impacts to the Arizona system:

13 And Allegheny will have no choice because of the way Southern California Edison and
14 California ISO operate their system, we will have to mitigate the actual transmission lines
15 in order to get our project on line. Mitigating those transmission lines [at] Palo
Verde/Devers, Devers/North Gila, Devers/Westwing is all generation out of the hub and
in Arizona. See 12/14/01 Tr., pp. 1019-1020.

16 Allegheny has committed to spend millions of dollars for the benefit of the Arizona system. By
17 federal law, FERC has jurisdiction over the interconnected transmission system, and, in the
18 unlikely event any entity ignored impacts on the Arizona transmission system, FERC is the
19 proper place to resolve those issues--not this Arizona power plant siting docket.

20 **C. BASED ON THE RECORD, SUFFICIENT TRANSMISSION CAPACITY LIKELY**
21 **WILL EXIST FOR LA PAZ.**

22 Staff's position also ignores the testimony and evidence establishing that
23 sufficient transmission capacity likely will exist out of the hub at the time La Paz comes on line
24 (2005). As stated in Allegheny's original brief, Mr. Smith ignores both likely transmission

1 improvements and plant delays/cancellations, which should result in sufficient transmission
2 capacity in 2005 to accommodate La Paz. The record and testimony on this point are set forth at
3 pages 10-13 of Allegheny's opening brief. But, even if insufficient transmission capacity existed
4 to deliver all of the merchant power at the hub, Staff's "displacement" argument misses the point
5 entirely. Any displacement of generation by La Paz will be a function of the competitive
6 market--not the plant's interconnection or physical constraints.

7 In Order 888 (issued in July 1996), FERC told the nation's electric companies to
8 open their transmission lines for competition. FERC's open access policy is intended to pave the
9 way for lower consumer prices by allowing merchant generators to compete for existing
10 transmission capacity. Staff glosses over the fact that transmission capacity is fixed and will be
11 available to the cheapest, most efficient and lowest cost power producer. Interconnecting La Paz
12 won't decrease transmission capacity (in fact, it will increase it by virtue of various upgrades).
13 To the extent there is more generation than transmission, the generators will compete for
14 transmission. That isn't a reliability or security issue by any stretch of the imagination.

15 Staff's position in this docket irreconcilably conflicts with FERC Order 888 on
16 several points. First, by preventing the displacement of "a priori" generation, Staff's position
17 ensures that existing generators or just those ahead of Allegheny in the licensing queue will have
18 exclusive transmission rights. That's exactly what FERC Order 888 is designed to prevent.

19 Second, Staff's position is bad policy. The whole idea of FERC Order 888 was to
20 foster a competitive market by ensuring that the lowest cost power gets on the grid. The more
21 competitive generators, the more lower priced power is available. Staff's moratorium on
22 additional CEC's would give existing generators and certificate holders a stranglehold on the
23 market. Electric consumers will suffer the consequences if Staff's policy arguments are adopted.

1 Third, Staff's opposition stems from its policy views of the marketplace--not any
2 problems or impacts from La Paz's interconnection to the grid: "However, the issue has never
3 been whether La Paz can or cannot deliver power to the market. Clearly, the evidence leads one
4 to believe that La Paz can and will be able to deliver. However, the bigger question concerns the
5 impact on the marketplace itself should La Paz interconnect." See Staff Brief, p. 13, lines 11-12.
6 Staff makes that argument despite its agreement that "La Paz will certainly displace a priori
7 generation at the Palo Verde Hub." See Staff's Brief, p. 8, lines 12-13. The only way that can
8 happen is if Allegheny supplies cheaper and more efficient power to customers. That is the
9 fundamental goal of a competitive market, FERC Order 888 and electric deregulation.

10 Any displacement that occurs as a result of La Paz isn't a function of reliability or
11 security. It's a function of most efficient supply to meet demand. Staff has presented no
12 evidence that La Paz will physically hinder any generator from delivering power to the market or
13 that La Paz will decrease transmission capacity. Instead, the record is undisputed that Allegheny
14 will be required to fund upgrades to preserve the reliability, security and capability of the grid.

15 Allegheny's ability to deliver power more efficiently and cheaper than other
16 generators is not a transmission limitation or a physical impact. If, for example, there were 1,000
17 MW of available transmission capacity at the hub, and existing generator A could provide 500
18 MW power at \$35/MWH, existing generator B could provide 500 MW of power at \$40/MWH
19 and Allegheny offers 1000 MW of power at \$30/MWH, Allegheny will compete with A and B to
20 more efficiently and economically serve the load. Because Allegheny is cheaper and more
21 efficient, Allegheny will gain transmission rights and serve the customers of A and B. That is
22 not, as Staff asserts, a reliability or security problem. Instead, it's a market solution that benefits
23 the Arizona consumer.

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